

# 13

## CONSUMER RIGHTS WHEN A SALESPERSON CONTACTS YOU AT HOME

### **§ 13. 1. Introduction**

This consumer rights chapter provides information on your rights when confronted in your home by a telephone or door-to-door salesperson. It contains the following sections:

#### **§ 13. 2. Door To Door Sales**

#### **§ 13. 3. You Have A Right To A Written Contract**

#### **§ 13. 4. You Have A Right To Cancel Any Contract Within Three Business Days**

#### **§ 13. 5. Payment For Referred Customers**

#### **§ 13. 6. You Have A Right To A Complete And Timely Refund Of Any Deposit Upon Proper Cancellation Of A Contract**

#### **§ 13. 7. All Door-To-Door Sellers Must Be Licensed Or Have A Permanent Place Of Business In Maine**

#### **§ 13. 8. Home Repair Transient Sellers**

#### **§ 13. 9. Frozen Food Sales**

#### **§ 13. 10. Remedies**

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#### **Appendix 2010 Legal Guide to Door-to-Door Crimes**

### **§ 13. 2. Door To Door Sales**

Purchasing goods or services from a door-to-door sales person (which can include sellers who *telephone* you at home), may be more convenient and may appear inexpensive, but there are also tremendous risks. When someone is selling you something in your own home they have you at a significant disadvantage. First, it is much harder to ask someone to leave your home (or even to say no

to them), than it is for you to leave a store. Second, most door-to-door sales are conducted by businesses that are not located in your general area, and in many cases not even in the state, so if you need to complain about the product or service, it is much more difficult and often impossible to receive satisfaction.

Because the door-to-door seller often has no permanent place of business and may even be from another state, there is a much greater risk of being cheated. Once you have parted with money, you may never receive the product at all, or the quality and quantity of the product may be less than you bargained for.

Maine law protects consumers from the unequal bargaining power of the salesperson who knocks on your door or calls you at home and the excessive risks associated with transient sellers. Following is a summary of your rights and responsibilities. If you do buy from your home, take full advantage of the law and use your common sense.

### **§ 13. 3. You Have A Right To A Written Contract**

The Maine Consumer Solicitation Sales Act<sup>1</sup> states that if you are first approached by a salesperson *in your home*, or *by telephone*, or anywhere, except in the seller's store,<sup>2</sup> and the transaction is for \$25 or more, and you are not going to resell the purchased item, then in most cases,<sup>3</sup> there must be a written contract.

In other words, in Maine if a telemarketer calls you at home and you agree to buy a good or service costing more than \$25, the telemarketer must send you a written contract which you must sign and return before the sale is final. The written contract must contain the signature of the consumer and seller, the date, the terms of the agreement and the name and permanent business address of the seller. The contract must also contain a statement which informs the consumer of the right to cancel within three business days (Monday through Saturday, unless it is a federal or state holiday). *See* Chapter 28 on How to Avoid Mail Order and Telemarketing Fraud. Violation of this law can be a Maine Unfair Trade Practice Violation<sup>4</sup> and a Class E crime (or Class D crime, if the violation was intentional).<sup>5</sup> The Maine Uniform Commercial Code (U.C.C.) sets forth contract law regulating the sale of goods by a merchant to consumers.<sup>6</sup> The U.C.C. and other statutory provisions, principally the Statute of Frauds<sup>7</sup> require certain contracts to be in writing before a court will enforce them (*e.g.*, contracts for goods costing \$500 or more).

<sup>1</sup> 32 M.R.S.A. §§ 4661-4670; similar requirements for home credit sales are found at 9-A M.R.S.A. § 3-501 - 3-507. These laws apply to sale contracts for \$25 or more.

<sup>2</sup> The Federal Trade Commission has adopted parallel protections in its "Cooling-off Rule," 16 C.F.R. Part 429; 60 Fed.Reg. 54180 (October 20, 1995). This Rule makes clear that the sale can take place in parking lots, hotels, convention centers, restaurants, and other places outside the seller's principle place of business. For example in a recent opinion by its legal staff, the F.T.C. found that this Rule applied to a consumer who purchased \$300 worth of photographs from a Florida company that was operating out of a North Carolina hotel room.

<sup>3</sup> Sales that are exempted from this law include bond or stock sales, insurance sales, and sales by a "supervised lender." *See* 32 M.R.S.A. § 4668.

<sup>4</sup> 5 M.R.S.A. § 207, *See* Chapter 3 in this Guide.

<sup>5</sup> 32 M.R.S.A. § 4667.

<sup>6</sup> *See generally* 11 M.R.S.A. §§ 2-101 to 2-725.

<sup>7</sup> 33 M.R.S.A. §§ 51-53. The purpose of the Statute of Frauds is to "prevent perjury and fraud." However, a defendant in a contract enforcement action may waive the statute's protection, allow verbal evidence of the contract, and become bound by it. *Dehahn v. Immes*, 356 A.2d 711, 717-18 (Me. 1976).

## **§ 13. 4. You Have A Right To Cancel Any Contract Within Three Business Days**

Even if you have signed a valid contract with the door-to-door seller or telemarketer, you have the right to cancel it within three business days (Monday through Saturday, unless it is a federal or state holiday) of the date of the contract.<sup>8</sup> **Please note:** generally speaking door-to-door or telephone sales are the **only** consumer contracts for which a consumer has three days to cancel.

To cancel the contract, you must give written notice to the seller at the address stated in the contract. The notice can be in whatever form you choose so long as your intent to cancel is clear. If this notice is mailed, it is effective if deposited in a mailbox by midnight of the third business day (weekday) following the date on the contract.<sup>9</sup>

If the contract is for *permanent home improvements*, then the seller may not *even begin* work until the three-day time period has expired.<sup>10</sup> If work has started or been completed, and you have properly canceled your contract, then you owe nothing to the seller.<sup>11</sup>

## **§ 13. 5. Payment For Referred Customers**

It is illegal for a door-to-door seller to offer to pay you a commission, rebate, or discount or refund to help the seller in any way to sell to another person, if this commission depends on the referral customer actually contracting to buy from the seller.<sup>12</sup> For example, if the seller promises to pay you money for the names of any neighbors who actually buy his product the seller has violated the law. It is *not* illegal for the seller to offer you money or a refund simply for the names of possible future customers.

## **§ 13. 6. You Have A Right To A Complete And Timely Refund Of Any Deposit Upon Proper Cancellation Of A Contract**

### **A. Cash Sales**

If the sale was for cash, and you have either returned the goods or made them available to the seller, then the seller must return your deposit within 15 days of the date you canceled.<sup>13</sup> **NOTE:** You must make the goods available for the seller to retrieve for a 20 day period following the date you canceled the contract. If the seller doesn't pick up the goods within this time, you can keep them.<sup>14</sup>

<sup>8</sup> 32 M.R.S.A. § 4663; 9-A M.R.S.A. § 3-502. See *Mountain Springs*, CV-95-419 (Me. Super. Ct., Kenn. Cty., June 17, 1996); *Recovery Market Services, Inc.*, CV-94-83 (Me. Super. Ct., Kenn. Cty., June 28, 1996).

<sup>9</sup> 32 M.R.S.A. § 4664; 9-A M.R.S.A. § 3-502.

<sup>10</sup> 32 M.R.S.A. § 4664-A; 9-A M.R.S.A. § 3-502(5).

<sup>11</sup> See *Caulkins v. Petullo*, 513 A.2d 43 (Conn.1986) (a contractor cannot seek restitution for work done in violation of a Connecticut law that requires all home construction contracts to be in writing).

<sup>12</sup> 32 M.R.S.A. § 4669.

<sup>13</sup> 32 M.R.S.A. §§ 4665-4666.

<sup>14</sup> 32 M.R.S.A. § 4665.

## ***B. Credit Sales***

If the sale was on credit, the seller *must*, within 20 days of being notified of the cancellation, return any down payments or notes you have signed. You can keep the goods until you've received your refund. You have this right even if the contract states otherwise.<sup>15</sup> **NOTE:** You must make the goods available to the seller to be retrieved for 40 days after the date of cancellation. If the seller doesn't retrieve them within this time, you can keep them.

## **§ 13. 7. All Door-To-Door Sellers Must Be Licensed Or Have A Permanent Place Of Business In Maine**

The Transient Sellers Act<sup>16</sup> states that if the seller does not have a permanent place of business in Maine where you can contact him (a home or building owned or held under a 12-month lease or rental agreement), then the seller must apply for a state license. The seller is *required to carry a copy of this license* with him during his door-to-door selling trips. Any advertisement of a transient seller in Maine must display the seller's license number. This law does not apply to sales worth less than \$25 or to sales of food or to sellers of such regulated products as goods, insurance, and bank services (e.g., credit cards).

While the Transient Seller's law **does** apply to telephone calls to the home or personal visits to the home, it usually does not apply to contact by mail. The one exception to this rule is when a transient seller contacts you by mail and offers you merchandise or money prizes free of charge but requires you to pay money to obtain the prize. This can be both an unfair trade practice and a Class E crime (or a Class D crime if the violation was intentional).<sup>17</sup>

In general, it is always wise to comparison-shop with local merchants before doing business with a transient seller. If the transient seller performs poorly, it is often very difficult to contact him in order to complain.

If you do decide to purchase merchandise from a transient seller, the seller must provide you with a written receipt, which displays his license number as follows: **"State Department of Professional and Financial Regulation Transient Seller's License Number."** Out of state multi-level sales organizations which do not have a permanent place of business in the state must also be registered as transient sellers as well as their employees (including "independent contractors").<sup>18</sup>

Licensed sellers must post a substantial bond or security deposit with the Department of Business and Financial Regulation unless they qualify under the strict waiver requirements. This security deposit or bond is used to satisfy any judgments, including fines and penalties, arising against the transient seller in connection with his sales to consumers in the State. The security deposit or bond is not refunded until 12 months after the expiration of the seller's license. In order to find out if a salesman is a licensed transient seller, demand to see a copy of his license, or call the Department of Professional and Financial Regulation, Licensing and Enforcement Division at 207-624-8603. You can also search on-line for whether a seller is licensed as a transient seller. Search for "Transient Sellers Maine Office of Licensing and Regulation" and click on "licensee search." For a guide to possible criminal

<sup>15</sup> 9-A M.R.S.A. §§ 3-504-505

<sup>16</sup> 32 M.R.S.A. §§ 14701-14716.

<sup>17</sup> 5 M.R.S.A. § 207; 32 M.R.S.A. § 14713.

<sup>18</sup> 32 M.R.S.A. § 14703. See *State of Maine v. Club Atlanta Travel*, No.CV-97-101 (Me. Sup. Ct., Kenn.Cty., 1997) (Consent Decree in which court fined multi-level marketing organization \$5,000 and required it to be registered as a transient seller).

violations by transient sellers, *see* Appendix A to this Chapter., *Maine Attorney General's Legal Guide to Door-To-Door Crimes*.

## **§ 13. 8. Home Repair Transient Sellers**

All door-to-door sellers of home repairs (driveway paving, chimney repairs, siding, tree-trimming, etc.) must be registered with the State.<sup>19</sup> The door-to-door seller *must* include his state registration number in the written contract the seller gives you. Failure to be registered or to reveal the registration number can be an unfair trade practice and a Class E crime (or Class D crime if the violation was intentional).<sup>20</sup> This new law is called the Door-To-Door Home Repair Transient Sellers Act and covers any home repair seller who does not have a permanent place of business in the municipality in which the solicitation is being made.

## **§ 13. 9. Frozen Food Sales**

Door-to-door sellers of frozen food service plans in Maine must allow the first time buyer 10 days to cancel the contract. Further, the consumer can also cancel the contract the day the food is actually delivered.<sup>21</sup>

## **§ 13. 10. Remedies**

If the seller has not followed the requirements of the Consumer Solicitation Sales Act (32 M.R.S.A. § 4661), the Home Solicitation Sales Act (9-A M.R.S.A. § 3-501), the Transient Sales Act (32 M.R.S.A. § 4681), or the Door-to-Door Home Repair Transient Sellers Act (32 M.R.S.A. §14512), as described in the preceding sections, then you have the following rights:

### ***A. Cancel The Contract***

Under the Unfair Trade Practices Act (5 M.R.S.A. §§ 207, 213) you can cancel the contract and receive a full refund of any deposit you may have made.

### ***B. Sue Under The Maine Unfair Trade Practices***

A violation of any of the above door-to-door or telephone sales laws is a violation of the Maine Unfair Trade Practices Act (5 M.R.S.A. §§ 207, 213). You can sue under this Act to recover damages or the return of your money plus attorney's fees and court costs: (1) in Small Claims Court, provided the amount of the contract is \$4,500 or less; (2) in District Court; or (3) in Superior Court. *See* Chapter 27 of this Guide for a guide to Small Claims Court.

### ***C. Report Any Suspected Violations To Your Local Police***

A violation of either the Consumer Solicitation Sales Law or the Transient Sales Act may subject the seller to criminal penalties. Violation of these laws can be a Class E crime (or a Class D crime, if the violation was intentional).<sup>22</sup>

<sup>19</sup> 32 M.R.S.A. §§ 14501-14512.

<sup>20</sup> 32 M.R.S.A. § 14512.

<sup>21</sup> 9-A M.R.S.A. § 3-502(1-A,6) (credit sales); 32 M.R.S.A. § 4664 (cash or credit sales).

<sup>22</sup> *See State of Maine v. John Durfee*, 539 A.2d 629 (Me. 1988) (driveway paver who did not use required written contract and did not wait three days to commence paving convicted of a crime and sentenced to jail).

## § 13. 11. Credit Card Purchases

If you pay for your goods and services with your credit card and you then have a dispute with the merchant because you think the merchant has violated the contract (*e.g.*, did not deliver the goods you ordered, misled you as to what goods or services would actually be provided, etc.) then any claims or defenses (other than tort claims) you might have against the merchant can also be raised against the issuer of your credit card.<sup>23</sup> However, before you can refuse to pay the issuer of your credit card the following requirements must be met:

- A. You must have made a good faith effort to resolve your dispute with the merchant. This can be accomplished by writing a letter to the merchant and keeping a copy of your letter as proof that you attempted to resolve your dispute.
- B. The amount of initial transaction with the merchant must exceed \$50; and
- C. The place where the initial transaction occurred has to have been in Maine (or within 100 miles of your Maine address).

When a merchant (either in state or out of state) contacts a consumer in the home, either in person, by telephone or by mail, then that transaction is taking place in the state of Maine and therefore any claims or defenses the consumer might have against the merchant can also be raised against the credit card issuer. *See* §§ 12.9 and 28.6 in this Guide for further information concerning your rights when you purchase by credit card.

## § 13. 12. Fraudulent Telemarketers

Both Maine and Federal telemarketing laws protect consumers from unfair telemarketer sales pitches. Maine's Consumer Solicitation Sales Act is particularly important because it requires telemarketers who initiate the sale by phoning you at home to provide you with a written contract that gives you three days to back out of the sale. *See in general* Chapter 28 in this Guide, How to Avoid Mail Order And Telephone Fraud.

The Maine Attorney General has sued two telemarketing companies and was able to make significant recoveries for Maine consumers. The state sued Mountain Springs Water Treatment Co. for allegedly deceptive practices in selling water softeners.<sup>24</sup> When the company closed and left no assets the state went after the three companies that had financed the consumers' purchases. These companies agreed to provide \$507,771 in financial relief to 200 Maine consumers.

In a separate case, the State sued Research Marketing Systems, Inc. on charges of fraudulent telemarketing practices.<sup>25</sup> The company allegedly tricked consumers into paying \$99 to \$999 to recover money the consumer had already lost to fraudulent telemarketers. But the company's recovery services were little more than form letters under the consumer's signature. In a court approval settlement, RMS agreed to distribute \$136,465 to 2,000 customers nationwide.

Finally, be careful of "negative option" sale tricks. A "free trial" period may result in a year of unwanted credit card charges. *See* Chapter 12, § 15 in this Guide.

<sup>23</sup> 9-A M.R.S.A. § 8-303(6). These limitations do not apply if the merchant itself issued (or controls) the credit cards you used for the purchase.

<sup>24</sup> *State of Maine v. Mountain Springs Water Treatment Co.*, No.CV-95-419 (Me. Sup. Ct., Ken.Cty, 1996).

<sup>25</sup> *State of Maine v. Recovery Marketing Systems, Inc.*, No.CV-94-83 (Me. Sup. Ct., Ken.Cty, 1996).

## **§ 13. 13. Selected Statutes**

### ***A. Consumer Solicitation Sales Act: 32 M.R.S.A. § 4681, Definitions***

As used in this subchapter, unless the context otherwise indicates, the following words shall have the following meanings.

1. Consumer. "Consumer" means any person who purchases or contracts for the purchase of merchandise for any purpose, except resale in the ordinary course of trade or business.
2. Merchandise. "Merchandise" includes any objects, wares, goods, commodities, intangibles or services.
- 2-A. Permanent place of business. "Permanent place of business" means the building or other permanently affixed structure, including a home residence, which is used in whole or in part for the purpose of engaging in sales of consumer merchandise. "Dealer" means any person or legal entity which meets the Used Car Information Act definition of a "dealer" at 10 M.R.S.A. § 1471, sub-§ 2.
3. "Implied warranty" means any implied warranty arising under the Maine Uniform Commercial Code, 11 M.R.S.A. § 2-314 (as modified by the Magnuson-Moss Act) in connection with the sale by a dealer of a used vehicle.
4. Sale. "Sale" includes any sale, transfer, exchange or barter, offer for sale or attempt to sell any merchandise for cash or on credit.

### ***B. Consumer Solicitation Sales Act: 32 M.R.S.A. § 4662, Contents Of The "Door To Door" contract***

Where merchandise is sold or contracted to be sold, whether under a single contract or under multiple contracts, to a consumer as a result of or in connection with a salesman's direct contact accomplished by means of and including, but not limited to, a personal visit or a telephone call upon the consumer, other than at the seller's place of business, without the consumer soliciting the initial contact, the contract shall be in writing, bear the signature of the seller and the consumer, contain the date of the transaction, the terms of the sale or offer, the name and the mailing address of the seller's permanent place of business, a statement of the consumer's right to avoid as provided in this subchapter and a statement of the limitation contained in section 4664-A. A completely executed copy of the contract or agreement shall be furnished by the seller to the consumer immediately after the consumer signs the agreement or contract.

### ***C. Transient Sellers Act: 32 M.R.S.A. § 14701, Definitions***

1. Consumer. "Consumer" means any person who purchases or contracts for the purchase of merchandise for any purpose except resale in the ordinary course of trade or business.
2. Employee. "Employee" means any independent contractor, agent or person working for a salary or commission.
3. Merchandise. "Merchandise" includes any objects, wares, goods, promises, commodities, intangibles, services or other things of value but does not include food or technical and vocational schools located outside of the State which are registered pursuant to Title 20, Section 2661.

4. Permanent place of business. "Permanent place of business" means any building or other permanently affixed structure, including a home residence, which is owned or held under a 12-month lease or rental agreement at the time business is commenced, and is used in whole or in part for the purpose of engaging in sales of consumer merchandise.
5. Person. "Person" includes natural person, corporations, trusts, partnerships, incorporated or unincorporated associations and any other legal entity.
6. Sale. "Sale" includes any sale, transfer, exchange or barter, offer for sale, promise to sell, attempt to sell, or advertisement for sale, of any merchandise for cash or for credit.
7. Transient seller of consumer merchandise or transient seller. "Transient seller of consumer merchandise" or "transient seller" means any person who engages in the business of selling merchandise to consumers by means of personal contact or telephone contact, whether or not the seller is present in the State at the time of the contact or the time of sale, and who does not have, for the purposes of carrying on such business, any permanent place of business within this State. "Transient sellers of consumer merchandise" does not include persons who sell at public fairs, expositions or bazaars or members selling on behalf of public service organizations. "Transient sellers of consumer merchandise" does not include persons who sell exclusively by mail contact, except for persons who offer merchandise or money prizes as free of charge, such as contest prizes or gifts for answering a survey, but who require the recipient to pay something of value in order to participate in this offer, including, but not limited to, entrance fees, processing fees or handling charges. A "transient seller of consumer merchandise" does not include a supervised lender as defined in Title 9-A, section 1-301, subsection 39.

***D. Door-To-Door Home Repair Sellers: 32 M.R.S.A. § 14501, Definitions***

1. Consumer. "Consumer" means any person who purchases or contracts for the purchase of home repair services
2. Department. "Department" means the Department of Professional and Financial Regulation, Division of Licensing and Enforcement.
3. Door-to-door sales. "Door-to-door sales" means the solicitation or sale of home repair services by a home repair seller or the seller's employees to a consumer as a result of or in connection with the seller's or the employee's direct contact accomplished by means of a personal visit to the consumer, other than at the seller's place of business, without the consumer soliciting the initial contact.
4. Employee. "Employee" means any independent contractor, agent or person working for a salary or a commission who is affiliated with a home repair seller.
5. Home repair seller. "Home repair seller" means any person, partnership, corporation, business, trust or other legal entity that sells or provides home repair services.
6. Home repair services. "Home repair services" means to fix, replace, alter, convert, modernize, improve or make an addition to real property primarily designed or used as a residence. "Home repair services" includes, but is not limited to, the construction, installation, replacement, improvement or cleaning of driveways,



swimming pools, porches, kitchens, chimneys, chimney liners, garages, fences, fall-out shelters, central air conditioning, central heating, boilers, furnaces, hot water heaters, electric wiring, sewers, plumbing fixtures, storm doors, storm windows, siding or awnings or other improvements to structures within the residence or upon the land adjacent to the residence, including tree trimming.

7. Permanent place of business. "Permanent place of business" means a building or other permanent structure, including a home residence, that is owned or held under a 12-month lease or rental agreement, from which business is commenced and that is used in whole or in part for the purpose of engaging in sales of home repair services.
8. Residence. "Residence" means a single-family or multifamily dwelling, including but not limited to a single-family home, apartment building, condominium, duplex or town house that is used or intended to be used by its occupants as a dwelling place.
9. Transient seller of home repair services. "Transient seller of home repair services," "transient seller" or "seller" means a home repair seller who engages in the business of door-to-door solicitations or sales of home repair services who does not have, at the time of the solicitation or contract, a permanent place of business in the municipality in which the door-to-door solicitation or sale occurs.

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**2010**

**LEGAL GUIDE TO DOOR-TO-DOOR CRIMINALS**

**Door-to-Door Sales Contracts**

**Transient Sellers**

**How Police and District Attorneys Can Protect Citizens  
From Crimes Committed by Door-to-Door Sellers**

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## INTRODUCTION

As you know, door-to-door home repair fraud is rampant in the State of Maine. This Legal Guide describes the three Maine door-to-door **criminal** laws that currently exist to protect Maine homeowners. These three laws are:

1. **The Consumer Solicitation Sales Act** (32 M.R.S.A. §§4661-4670), which requires that a door-to-door seller of home repair services must use a specific written contract and wait three (3) days before even **beginning** the job. This is important because if you find them working within three (3) days of the solicitation then you have “caught” them in the act of violating this law. Violation is a Class E crime. If the violation is intentional, it is a Class D crime.

2. **The Transient Sales Act** (32 M.R.S.A. §§14701-14716), which requires transient sellers of home repair services to register with the State if they do not have a permanent place of business in Maine (which is defined as either a 12-month lease or ownership of the business building). You should ask the address of their Maine “permanent place of business”. If they do not have one, demand to see proof of their State registration as a Transient Seller. Failure to be registered can be a Class E crime. If intentional, a violation is a Class D crime. Call Licensing Division at the Maine Department of Professional and Financial Regulation (624-8603) to confirm that the seller is registered. Or you can search Maine’s online list of licensees. Go to [www.maine.gov/pfr/professionalicensing/license\\_search.htm](http://www.maine.gov/pfr/professionalicensing/license_search.htm).

3. Most recently, we have enacted the **Door-to-Door Seller of Home Repair Services Act** (32 M.R.S.A. §§14501-14512). This new law builds on the two laws above and requires any **door-to-door seller of home repair services** to be registered with the State and to carry a State issued registration card if he is soliciting in a municipality in which he does not have a permanent place of business (a 12-month lease or ownership). As you can imagine, this law is relative easy to enforce. If you find a driveway paver who is going door-to-door ask them: (a) do you have a permanent place of business in this municipality; (b) if not, show me your State registration card. Violation is a Class E crime. If the violation is intentional, it is a Class D crime. Call Licensing Division at the Maine Department of Professional and Financial Regulation (624-8603) to confirm that the seller is registered. Or you can search Maine’s online list of licensees. Go to [www.maine.gov/pfr/professionalicensing/license\\_search.htm](http://www.maine.gov/pfr/professionalicensing/license_search.htm).

The following chapters discuss these laws in much greater detail. The typical door-to-door seller of home repair services (which includes not just driveway paving but tree-trimming, chimney repairs, etc.) could violate all three of these laws in the course of their standard business operation.

I am also attaching in an Appendix a hypothetical fact pattern and four draft District Court criminal complaints based on that fact pattern.

We are attempting to maintain in this office a file listing reports of the many different door-to-door sellers operating in the State. If you have any questions concerning a particular door-to-door seller, please do not hesitate to contact me or at 626-8842. We will tell you what we know about that particular seller.

Thank you.

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## **DOOR-TO-DOOR SALES CONTRACTS**

### **The Consumer Solicitation Sales Act (Cash Sales)**

#### **32 M.R.S.A. §§4661-4670 (Criminal Violation)**

#### **1. INTRODUCTION: THE THREE-DAY WAITING PERIOD**

The purpose of the three-day waiting period required by the Consumer Solicitation Sales Act (cash or check sales) is to provide consumers with a chance to reconsider decisions to buy certain goods or services that may have been sold "door-to-door" under high-pressure conditions. Like the Transient Sales Act (see pages 5 to 8), these laws have particular application to driveway pavers. Violations are Class D crimes.

Basically, the Consumer Solicitation Sales Act (cash or check sales) require sellers to use written contracts that inform consumers of their three-day right to void the contract. Further, any permanent addition to a house (e.g., driveway paving, a rebuilt chimney, new siding) cannot even be started by the door-to-door seller until the three-day cooling-off period has elapsed, and the contract must specifically tell this to the homeowner.

#### **2. WHAT SALES ARE COVERED**

A sale is a CONSUMER SOLICITATION SALE if:

- A. the sale<sup>1</sup> involves "merchandise" -- objects, wares, goods, commodities, intangibles or services;
- B. the goods or services cost more than \$25;
- C. the sale occurs anywhere other than at the seller's place of business; and
- D. the initial contact was made by the seller, in person or by phone, not the consumer (32 M.R.S.A. §4662, Appendix A, p. A-2).

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<sup>1</sup>"Sale" includes any sales, transfer, exchange or barter, offer for sale or attempt to sell any merchandise for cash or credit.

**3. WHAT ARE DOOR-TO-DOOR SELLERS REQUIRED TO DO**

If the sale is a "consumer solicitation sale", the seller must:

- A. Provide a written contract with:
  - (1) The seller's name and address,
  - (2) the date,
  - (3) the terms of the sale or offer,
  - (4) the consumer's three-day right to cancel,
  - (5) the signatures of seller and consumer,
  - (6) if the contract involves a permanent addition to the consumer's home (e.g., a driveway paving job or rebuilt chimney), a statement that the work cannot even be started until the consumer's right to cancel has expired;
- B. provide the consumer with a completed copy of the contract signed by both parties:
- C. if home repair or improvement-type work is being provided, wait the required three business days before commencing work;
- D. if the consumer exercises his right to cancel, the seller must:
  - (1) if a permanent addition to the home is involved (e.g., driveway paving) not start work and return any money. If the work has already begun the homeowner can sue civilly for any damages to his home.
  - (2) pick up any goods from the consumer within 20 days of cancellation (or else the consumer is free to keep them), and
  - (3) return the consumer's money within 15 days of cancellation.

#### **4. CONSUMER RIGHTS AND OBLIGATIONS**

A. The consumer may cancel the agreement by midnight of the third business day (only Sundays and legal holidays are not business days) following the day on which the sale is made. All that is required is placing the written notice of cancellation in the mail before the three days. It is best (but not necessary) to send the notice by registered mail. The consumer should keep a copy.

B. The consumer must void the sale IN WRITING. No special words are needed. Anything that in effect says, "I don't want it; give me my money back" is enough.

C. Once the consumer has canceled, he or she must hold any goods for twenty (20) days for the seller to come and get them. THE CONSUMER DOES NOT HAVE TO TAKE THEM ANYWHERE OR MAIL THEM. If the seller does not come and get the goods within twenty (20) days, the CONSUMER MAY TREAT THEM AS A GIFT and is still entitled to his or her money back.

D. If the seller started or completed a permanent addition to the home (such as driveway paving) before the three-day right to cancel expired, the consumer may still cancel and is under no obligation to pay for the work already done.

#### **5. CRIMINAL VIOLATION BY DOOR-TO-DOOR SELLERS**

A. A seller's violation of the Consumer Solicitation Sales Act is a Class E crime (32 M.R.S.A. §4667). If the State pleads and proves that the violation was intentional, then the seller has committed a Class D crime. Violations are also civil violations of the Unfair Trade Practices Act.

B. Solicitations made at the home of a purchaser and which constitute a consumer credit transaction are exempt from this law (32 M.R.S.A. §4668), and should be enforced under the equivalent provisions found at 9 M.R.S.A. §§3-501-3-507 (criminal penalty, fine of up to \$2,500 or up to six months in jail or both). This credit law will rarely come into play with driveway pavers as their sales are almost always cash sales.

C. Only the owner or co-owner of the door-to-door business can commit the crime, not simply a member of the crew.



## 6. WHAT LAW ENFORCEMENT OFFICIALS CAN DO

If you encounter a door-to-door seller in your community, do the following:

A. Find out who is the owner (owners) of the business and who are the employees (get everyone's name, address and birthday and all vehicle identifications).<sup>2</sup>

B. Find out what he is selling and the location at which the sale is made; remember the seller must initiate the sales discussion or it probably does not meet the definition of a door-to-door solicitation (32 M.R.S.A. §4662).

C. Find out if a written contract is being used.

D. Determine if the contract conforms with the law. We never have found a door-to-door driveway paver that has in its written contract the required statement that work cannot begin until the three-day cancellation period has elapsed.

E. If there is no contract or if it does not conform with the law (e.g., both parties have not signed; the seller's name and address are not present; the three-day waiting period is not properly described, etc.), the seller can be charged with a Class D crime.

F. If the seller is putting in a permanent addition to the household (e.g., a new driveway-paving job) and he did not wait three days, then he can be charged. Thus, no warrant is needed if you find him working on the driveway before the three-day waiting period has finished running.

H. Any complaints of this nature should also be reported to the Attorney General's Office at 626-8800 for our records.

Make sure we receive the seller's name and address and identification of employees and vehicles. Also, any photos of the pavers would be very helpful, as they sometimes "exchange" names.

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<sup>2/</sup> It is sometimes difficult to tell who is the "owner" of a door-to-door driveway paving crew. Interview the members of the crew as to whose business it is.

## **SELLERS WITHOUT A PERMANENT PLACE OF BUSINESS**

### **The Transient Sales Act** **32 M.R.S.A. §§14701-14716 (Criminal Violation)**

#### **1. INTRODUCTION**

The Transient Sales Act has particular application to those sellers who travel into and throughout the State selling services and goods such as driveway paving jobs or magazine subscriptions, and who then seem to "disappear" by the time problems develop.

Transient sellers, by statutory definition, have no permanent place of business in the State. They are difficult to locate when complaints against them are received. The Maine Class D criminal law is designed to protect consumers against financial loss in dealing with such sellers. The law requires that transient sellers be registered by the State Department of Professional and Financial Regulation and post a substantial bond or cash, and carry with them at all times a State identification card.

#### **2. WHO IS A TRANSIENT SELLER**

A transient seller is a person (including a corporation) who:

A. owns or is a partner in a business which sells<sup>3</sup> any objects, wares, goods, promises, commodities, intangibles, services or other things of value (EXCLUDING food and enrollment at vocational and technical schools located outside of Maine and that are registered with the Department of Educational and Cultural Services);

B. sells face-to-face or by telephone;

C. sells to consumers and businesses (except those businesses which will, in turn, resell the product); and

D. does not have a permanent place of business in Maine: a building which is either owned or rented with at least a 12-month written lease.

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<sup>3</sup>/"Selling" includes any sale, transfer, exchange or barter, offer to sell, promise to sell, attempt to sell or advertisement to sell for cash or credit.

**3. WHO IS NOT A TRANSIENT SELLER**

A person is NOT a Transient Seller if:

- A. he or she sells the above-mentioned items at public fairs, expositions or bazaars;
- B. he or she is a member of a public service organization selling on its behalf;
- C. he or she sells exclusively by mail contact; or
- D. he or she is only an employee of a transient seller.

**4. WHAT ARE TRANSIENT SELLERS REQUIRED TO DO**

A. Transient sellers must REGISTER with the State Department of Professional and Financial Regulation in Augusta and obtain a registration. A substantial bond or cash must be posted before a registration is granted (32 M.R.S.A. §14708, Appendix A, p. A-8).

B. Transient sellers and their employees must carry at all times when engaging in sales a Transient Sellers registration and must present the registration for inspection upon request of any person (32 M.R.S.A. §14703 (2)).

C. Every time a Transient Seller makes a sale, he must provide the customer with a written receipt which discloses his State registration number and discloses his name and permanent place of business (32 M.R.S.A. §14704 (2)).

D. Any advertisement placed by a Transient Seller must disclose the Transient Seller's registration number in the following way:

State Department of Professional and Financial Regulation  
Transient Seller's Registration Number: (fill in number)

The advertisement shall also disclose the Transient Seller's permanent business address (32 M.R.S.A. §14704 (1)).

E. Transient Sellers must comply with any relevant municipal ordinances as well as the State law.

## **5. CRIMINAL AND CIVIL VIOLATIONS BY TRANSIENT SELLERS**

A. Transient Sellers who sell without a license and registration number issued pursuant to this statute can commit a Class E crime. If the State pleads and proves that the violation was intentional, then the seller has committed a Class D crime with a maximum penalty of one year in jail and a \$1000 fine (32 M.R.S.A. §§1470(2), 14703(3), 14704(3)).

B. In addition, any violation of the Transient Sales Act violates the Unfair Trade Practices Act, administered by the Attorney General. The Unfair Trade Practices Act is enforced through civil remedies (5 M.R.S.A. § 207).

## **6. WHAT LAW ENFORCEMENT OFFICIALS CAN DO**

If you encounter a person selling merchandise in your town and you suspect he might be a Transient Seller, do the following:

- A. find out what he is selling;
- B. find out who he is selling to;
- C. find out who he works for or is he self-employed; obtain company name, addresses and the personal background of the seller;
- D. find out if the business has a permanent place of business in Maine (he must own it or have a 12-month written lease; the seller's home can qualify as a place of business);
- E. if the company (or if he is self-employed, if he himself) has no permanent place of business in Maine, find out if he is licensed with the Department of Professional and Financial Regulation. Call the Licensing and Enforcement Division at 624-8603 and ask if either the company or the seller or both are licensed as a Transient Seller or check online by going to [www.maine.gov/pfr/professionallicensing/license\\_search.htm](http://www.maine.gov/pfr/professionallicensing/license_search.htm).
- F. find out if he is properly disclosing in his written receipt or contract his State identification number and permanent place of business;
- G. find out if his advertisements properly disclose his State identification number and his permanent place of business;
- H. if the company is licensed (or if a self-employed seller is licensed) and not violating any local ordinance or the Consumer Solicitation Sales Act (see previous pages 1-4), the salesperson may continue to sell;

I. if the company is not licensed by the State, the company has committed a Class E or D crime and a summons can be issued;

J. if the company is unlicensed or if the salesman does not have his registration then the owner or the seller or both can be arrested with a warrant or summonsed and charged with a Class E or D crime. (Remember: you cannot arrest if the crime is not committed in your presence, but you can issue a summons or obtain a warrant);

K. if you charge or warn a salesperson, please call the Consumer Protection Division of the Attorney General's Office (626-8800 or 626-8849) or the Attorney General's Investigative Division at (626-8520) so that there is a record of the seller's name and address.

**DOOR-TO-DOOR TRANSIENT SELLERS OF  
HOME REPAIR CONTRACTS**

**The Door-To-Door Home Repair Transient Sellers Act  
(32 M.R.S.A. §§14501-14512 (Criminal Violation))**

**1. INTRODUCTION: PAVERS MUST BE REGISTERED WITH THE STATE**

In 1993 the Legislature passed a new law that complements both the Consumer Solicitation Sales Act and the Transient Sellers Act. It requires any seller of home repair services (which includes a long listing of almost every home repair activity ever imagined, see 32 M.R.S.A. §14501 (6)) to be registered with the State if the seller is going door-to-door in a municipality in which he does not have a permanent place of business. Said sellers must not only have a State registration number, but must use a specific contract that meets the requirements of the law. In order to find out if a paver is registered, call:

**Department of Professional & Financial Regulations  
Division of Licensing & Enforcement, Transient Sales  
35 State House Station, Augusta, Maine 04333-0035  
Telephone: 207-624-8603 or check online at  
[www.maine.gov/pfr/professionallicensing/license\\_search.htm](http://www.maine.gov/pfr/professionallicensing/license_search.htm)**

**2. WHAT SALES ARE COVERED**

A sale comes under the Door-To-Door Home Repair Transient Sellers Act if:

- A. The sale involves any home repair service (see statute for the definition).
- B. The sale occurs anywhere other than at the seller's place of business in a municipality in which the seller does not have a permanent place of business;
- C. The initial contact was accomplished by means of a personal visit to the consumer, other than at the seller's place of business, without the consumer soliciting the initial contact (32 M.R.S.A. §14501 (3)).

3. **WHAT ARE TRANSIENT DOOR-TO-DOOR SELLERS OF HOME REPAIR SERVICES REQUIRED TO DO**

If the sale is a door-to-door transient seller of home repair services sale, then the seller must:

A. Provide the consumer with a written contract that meets the written contract standards for:

(1) Consumer Solicitation Sales Act (the three day right to revoke); see pages 1-4;

(2) Transient Seller Act ( but not if the seller has a permanent place of business somewhere in Maine); see pages 5-8.

B. Wait the required three business days before commencing work;

C. If the consumer exercises his right to cancel, the seller must return the consumer's money within 15 days of cancellation.

4. **CONSUMER RIGHTS AND OBLIGATIONS**

The consumer rights and obligations are the same as set forth in the Consumer Solicitation Sales Act above (see pages 1-4).

5. **CRIMINAL VIOLATION BY TRANSIENT DOOR-TO-DOOR HOME REPAIR SELLERS**

A. A seller's violation of the door-to-door home repair transient sellers act is a Class E crime (32 M.R.S.A. §14512,). If the State pleads and proves the violation was intentional, then the seller has committed a Class D crime. Violations are also civil violations of the Unfair Trade Practices Act.

B. It should be fairly easily to establish whether the seller has violated the statute. If the seller is going door-to-door and does not have a permanent place of business in the municipality in which he is soliciting. Then the seller must be registered with the State. Call the State Licensing Division at 624-8603 and ask if the door-to-door seller is registered under the Door-To-Door Home Repair Transient Sellers Act. If not; and you can prove that he was going door-to-door and he initiated contact with the consumer, then you have a solid Class D criminal

violation. You can also check online by going to [www.maine.gov/pfr/professionallicensing/license\\_search.htm](http://www.maine.gov/pfr/professionallicensing/license_search.htm).

## **6. WHAT LAW ENFORCEMENT OFFICIALS CAN DO**

If you encounter a transient door-to-door seller of home repair services in the act of working in your community, do the following:

A. Find out who is the owner (owners) of the business and who are the employees (get everyone's name, address, and birth date and all vehicle identifications).

B. Find out what is being sold and where the sale was made; remember, the seller must initiate the sales discussion or it probably does not meet the definition of a door-to-door solicitation (32 M.R.S.A. §4662).

C. Find out if the owner has a permanent place of business in the State (owns the business location or has a 12-month lease) (32 M.R.S.A. §14701(5)).

D. If the seller is soliciting in a municipality in which he does not have a permanent place of business, find out if the seller is registered with the State as a door-to-door home repair transient seller (32 M.R.S.A. §14504). To do this, call the State Division of Licensing and Enforcement at 207-624-8603 or go to [www.maine.gov/pfr/professionallicensing/license\\_search/htm](http://www.maine.gov/pfr/professionallicensing/license_search/htm)

E. If you find the seller actually in the act of soliciting or in the act of doing the paving work, and he is in violation of any of our criminal door-to-door sale laws (i.e., is not registered with the State, is not using the required written contract, not waiting the full three days before beginning work, etc.), then no warrant is needed in order to make an arrest.

F. Any complaints of this nature should be reported to the Consumer Protection Division of the Attorney General's Office at (626-8800) or the Attorney General's Investigative Division at (626-8520) for our records. Make sure you obtain the seller's name and address and identification of employees and vehicles. Also, any photos of the pavers would be very helpful, as they sometimes "exchange" names.



## **APPENDIX A**

1. Hypothetical Fact Pattern of a Door-to-Door  
Driveway Paver and Sample Criminal Complaints  
(pp. A-1 to A-2)
2. Sample Criminal Complaints (pp. A-3 to A-6)

## **HYPOTHETICAL FACT PATTERN OF A DOOR-TO-DOOR DRIVEWAY PAVER AND SAMPLE CRIMINAL COMPLAINTS**

On April 15, 1997 **John Seller** and his crew of driveway pavers drove into South Portland. Mr. Seller resides in Biddeford but moves around the State selling his home repair services. Mr. Seller often sends an employee to the doors to do the initial solicitation.<sup>4</sup>

The crew arrives at consumer **Jane Doe's** house at approximately 4:30 p.m. One of Mr. Seller's employees goes to the front door and tells Ms. Doe that they just finished a job in the neighborhood and that they had a little bit of blacktop left over and could give her a real good deal.

Ms. Doe agrees to pay \$600.00 for the crew to blacktop her entire driveway. She also agrees that he should not wait 3 days and instead should start to work immediately.<sup>5</sup> She signs a simple form contract, which has the heading:

**John Seller's Paving Company**  
Biddeford, Maine

The contract does not have a permanent business address<sup>6</sup> and there is no provision that reads the consumer has three (3) days in which to cancel this contract and that the work will not be started until this three (3) day period has passed.<sup>7</sup>

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4/ If his crew are acting as his agents, Mr. Seller is responsible for his crew actions

5/ A consumer cannot waive her rights to the three day "cooling-off" period provided by the Consumer Solicitation Sales Act.

6/A door-to-door seller's contract must have the name and mailing address of the seller's permanent place of business (32 M.R.S.A. §4662). If the seller does not have a permanent place of business then he must be registered with the State as a "transient seller" (32 M.R.S.A. §14703) (call State Licensing Division at 624-8603 to confirm that the paver is registered).

7/ This contract clearly violates the Consumer Solicitation Sales Act. See 32 M.R.S.A. §4662.

Once Ms. Doe agreed to the job, Seller's crew immediately began work.<sup>8</sup> They quickly laid on the blacktop, rolled it smooth, and cleaned up after themselves. It appeared to be a reasonably good job. Seller then approached Ms. Doe for his money. He stated to her: "I'm afraid the driveway was longer than we estimated. Therefore, I'm going to have to charge you \$900.00." Ms. Doe protested but she finally agreed and paid him by check.<sup>9</sup>

While the job was being completed,<sup>10</sup> South Portland Police had been alerted by a neighbor. They drove up to inspect the job and were told by John Seller that he had a contract with Ms. Doe, and that she had authorized him to do the work immediately and not wait three (3) days.<sup>11</sup>

This fact pattern could result in the following four criminal complaints.

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8/Seller must wait 3 days before beginning a permanent addition to the homestead (e.g., driveway repair, new siding, chimney repair, etc.). (32 M.R.S.A. §4664-A).

9/ Seller cannot change the terms of the contract. If his inflated charge was intentional fraud, then this could be Theft by Deception (17-A M.R.S.A. § 354).

10/ If the police arrived while the job is being completed, then Seller has been caught in the midst of a three count Class D crime (Seller's contract was illegal and he did not wait three days (**Consumer Solicitation Sales Act**); he was not registered with the State as a Transient Seller (**Transient Sellers Act**) and he is not registered with the State as a door-to-door seller of home repairs (**Door-to-Door Sellers of Home Repairs Contracts Act**) (all State Licensing Division at 624-8603 to confirm that the paver is registered).

11/ The contract is illegal. Seller cannot persuade Ms. Doe to waive her right to revoke after a three day waiting period (3 M.R.S.A. §4667).

STATE OF MAINE  
CUMBERLAND, SS

DISTRICT COURT  
LOCATION: PORTLAND  
CRIMINAL ACTION  
DOCKET NO. CR-07-

STATE OF MAINE,  
  
Plaintiff

v.

JOHN SELLER,  
  
Defendant

) **Criminal Complaint For:**  
) Count I: Violation Of Consumer Solicitation  
) Sales Act, Class D, 32 M.R.S.A. §4662(2)(A)  
)  
) Count II: Violation of Consumer Solicitation  
) Sales Act, Class D, 32 M.R.S.A. §4664-A(2)(A)  
)  
) Count III: Violation Of Transient Sales Act,  
) 32 M.R.S.A. §14702(2)(A)  
)  
) Count IV: Violation of Transient Sales Act,  
) 32 M.R.S.A. §14703(3)(A)  
)  
) Count V: Violation of Door-to-Door Transient  
) Sellers of Home Repairs Act, 32 M.R.S.A.  
) §14504(2)(A)  
)  
) Count VI: Violation of Door-to-Door Transient  
) Sellers of Home Repairs Act, 32 M.R.S.A. §  
) 14506(2)(A)

DOB: 05/23/55  
DESCRIPTION:  
ADDRESS:  
STATE IDENTIFICATION NO:  
PORTLAND POLICE DEPT INCIDENT NO:

The below-signed deposes and says upon information and belief:

**COUNT I**

On or about April 15, 2007, in the City of Portland, County of Cumberland, State of  
Maine, the above named Defendant did engage in the business of Consumer Solicitation of Sales

in that (1) he entered into a contract with the consumer Jane Doe for the purpose of repairing her driveway paving and (2) the initial contact with the consumer was made by the Defendant by contacting her at her home and (3) he failed to provide the consumer with a written contract which met the requirements of the Consumer Solicitation Sales Act, in violation of the Consumer Solicitation Sales Act, 32 M.R.S.A. §§4661-4671.

## **COUNT II**

On or about April 15, 2007, in the City of Portland, County of Cumberland, State of Maine, the above named Defendant did engage in the business of Consumer Solicitation of Sales in that (1) he entered into a contract with the consumer Jane Doe for the purpose of repairing her driveway paving and (2) the initial contact with the consumer was made by the Defendant by contacting her at her home and (3) he commenced work without waiting three (3) days from the date the contract was entered into, all in violation of the Consumer Solicitation Sales Act, 32 M.R.S.A. §4661-4671.

## **COUNT III**

On or about April 15, 2002, in the City of Portland, County of Cumberland, State of Maine, the above named Defendant did engage in the business of selling driveway repair services to consumer Jane Doe by (1) personally contacting her at her home for the purpose of carrying on such business and (2) not having any permanent place of business within this state and (3) not being registered with the Department of Professional and Financial Regulation as a Transient Seller, all in violation of the Transient Sales Act, 32 M.R.S.A. §§ 14701-14716.

#### **COUNT IV**

On or about April 15, 2007, in the City of Portland, County of Cumberland, State of Maine, the above named Defendant did engage in the business of selling driveway repair services to consumer Jane Doe by (1) personally contacting her at her home for the purpose of carrying on such business and (2) not having any permanent place of business within this state and (3) not having a valid registration in his immediate possession at all times when engaging in the sale of consumer merchandise, all in violation of the Transient Sales Act, 32 M.R.S.A. §§ 14701-14716.

#### **COUNT V**

On or about April 15, 2007, in the City of Portland, County of Cumberland, State of Maine, the above named Defendant did engage in the door-to-door sale of home repair services with the consumer Jane Doe to repair her driveway paving and (1) at the time of sale did not have a permanent place of business in the municipality in which the sale occurred, namely, South Portland and (2) was not registered with the Department of Professional and Financial Regulation as a Transient Seller of home repair services, all in violation of the Door-to-Door Home Repair Transient Sellers Act, 32 M.R.S.A. §§14501-14512.

#### **COUNT VI**

On or about April 15, 2007, in the City of Portland, County of Cumberland, State of Maine, the above named Defendant did engage in the door-to-door sale of home repair services with the consumer Jane Doe to repair her driveway paving and (1) at the time of sale did not have a permanent place of business in the municipality in which the sale occurred, namely, South Portland and (2) failed to include in a written contract for door-to-door sales of home repair

services his state door-to-door sales registration number, all in violation of 32 M.R.S.A. §§  
14501-14512.

\_\_\_\_\_  
COMPLAINANT

Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

Dated: \_\_\_\_\_

\_\_\_\_\_  
CLERK/COMPLAINT JUSTICE/JUDGE

*Jail and Restitution*